

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

ETAS ID: TM436013

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	COURT ORDER		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
WBS, Inc.		06/07/2017	Corporation:
RECEIVING PARTY DATA			
Name:	RATT		
Street Address:	603 Rose Avenue		
City:	Venice		
State/Country:	CALIFORNIA		
Postal Code:	90291		
Entity Type:	Partnership: CALIFORNIA		
Composed Of:	<ul style="list-style-type: none"> Juan Croucier, UNITED STATES, INDIVIDUAL Stephen Percy, UNITED STATES, INDIVIDUAL Warren DeMartini, UNITED STATES, INDIVIDUAL 		
PROPERTY NUMBERS Total: 4			
Property Type	Number	Word Mark	
Registration Number:	1383345	RATT	
Registration Number:	1383344	RATT	
Registration Number:	1368246	RATT	
Registration Number:	1368245	RATT	
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Email:	juan@juancroucier.com		
Correspondent Name:	Juan Croucier		
Address Line 1:	603 Rose Avenue		
Address Line 4:	Venice, CALIFORNIA 90291		
NAME OF SUBMITTER:	Juan Croucier		
SIGNATURE:	/Juan Croucier/		
DATE SIGNED:	07/21/2017		
Total Attachments: 19			

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JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

WBS, INC., a California corporation

Plaintiff,

vs.

JUAN CROUCIER, an individual,
CROUCIER PRODUCTIONS, INC., a
California Corporation; ROB HOFFMAN,
an individual, ONE MANAGEMENT and
DOES 1 through 10, inclusive.

Defendants.

Case No.: CV-15-07251 DDP (JCx)

JUDGMENT

In light of this Court's Order Re: Motions for Summary Judgment (Docket No. 181) and Order Denying Plaintiff's Motion for Reconsideration (Docket No. 222), judgment is hereby entered in favor of all Defendants and against Plaintiff WBS, Inc.

IT IS SO ORDERED AND ADJUDGED.

Date: June 7, 2017

By: 

UNITED STATES DISTRICT COURT
HONORABLE DEAN D. PREGERSON

- 1 -

[PROPOSED] JUDGMENT

**TRADEMARK
REEL: 006110 FRAME: 0610**

AO 120 (Rev. 08/10)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court _____ for the Central District in California _____ on the following

☒ Trademarks or ☐ Patents. (☐ the patent action involves 35 U.S.C. § 292.):

DOCKET NO. 2:15-cv-07251-DDP	DATE FILED 9/15/2015	U.S. DISTRICT COURT for the Central District in California
PLAINTIFF WBS, Inc., a California corporation		DEFENDANT JUAN CROUCIER, an individual; CROUCIER PRODUCTIONS, INC., a California Corporation; ROB HOFFMAN, an individual; ONE MANAGEMENT and DOE
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 1383345	2/18/1986	WBS, Inc.
2 1383344	2/18/1986	WBS, Inc.
3 1368246	10/29/1985	WBS, Inc.
4 1368245	10/29/1985	WBS, Inc.
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT 6/7/2017 Judgment

CLERK Kiry Gray	(BY) DEPUTY CLERK L Chai	DATE
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Copy 1—Upon initiation of action, mail this copy to Director ^X Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

TRADEMARK
REEL: 006110 FRAME: 0611

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	WBS, INC., a California)	Case No. CV 15-07251 DDP (JCx)
12	Corporation,)	
)	
13	Plaintiff,)	
)	
14	v.)	ORDER RE: MOTIONS FOR SUMMARY
)	JUDGMENT
15	JUAN CROUCIER, et al)	
)	
16	Defendants.)	
)	
17	_____)	[Dkts. 159, 119, 115, 107]

Presently before the court are three separate motions for summary judgment: one filed by Defendant Juan Croucier, another filed by Defendants Rob Hoffman and 1 Model Management, LLC (collectively, "Hoffman"), and a third filed by Plaintiff. Having considered the submissions of the parties, the court grants Defendants' motions, denies Plaintiff's motion, and adopts the following Order.¹

¹ It has not escaped the court's attention that Plaintiff's submissions undisputedly violate several of this district's local rules. In the interest of resolving matters on the merits, the court denies Defendant Croucier's request to strike Plaintiff's Motion. (Dkt. 159.) Plaintiff's "Response" to Croucier's request, however, is not well-taken. Plaintiff's attempt to impugn Croucier's motives in making the request does nothing to excuse or

(continued...)

1 **I. Background**

2 In 1985, the five founding members of the heavy metal band
3 RATT formed a California partnership ("the RATT Partnership" or
4 "Partnership"). (Declaration of Juan Croucier in Support of
5 Motion, Ex. A.) The members of the RATT Partnership were Robinson
6 Lantz Crosby, Stephen Percy, Robert Blotzer, Warren DeMartini, and
7 Defendant Juan Croucier. (Id.) A written agreement formalizing
8 the Partnership (the "Partnership Agreement") provided that "each
9 member . . . owned an equal 20% share in the partnership, including
10 in [several] RATT trademarks." (Id. ¶ 4; Ex. A at 5).² Under the
11 Partnership Agreement, no partner could transfer his interest
12 without the unanimous written consent of all partners. (Id., Ex. A
13 at 14.) Partners could voluntarily withdraw from the RATT
14 Partnership by giving the other partners three months written
15 notice of the withdrawing partner's intent to withdraw, or could be
16 involuntarily expelled from the RATT Partnership with the unanimous
17 consent of the other partners. (Id., Ex. A at 16.)

18 The band went on hiatus in 1992, by which time one of the five
19 members of the RATT Partnership, Crosby, had been expelled in
20 accordance with the Partnership Agreement. (Croucier Decl. ¶ 6.)
21 In 1992, Percy hand-wrote a document referring to his "departure
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25 ¹(...continued)
26 justify Plaintiff's violations. Plaintiff's counsel is cautioned
27 that the court expects full compliance with all procedural rules,
28 and that further violations may result in sanctions.

27 ² The word and design marks at issue were registered in 1985,
28 and bear registration numbers 1383345, 1383344, 1368246, and
136824.

1 from RATT" and stating that he was "leaving the band."³ (Croucier
2 Decl., Ex. B.) That same year, DeMartini's representative informed
3 the other members of the band that DeMartini was no longer a member
4 "of the recording and performing group professionally known as
5 RATT." (Croucier Decl., Ex. C.)

6 In January 1997, Blotzer and Percy purportedly sent Croucier
7 a "letter of expulsion" expelling him from the RATT Partnership.
8 (Supplemental Declaration of Drew Sherman, Ex. G at 18; Ex. X at
9 16.) Later that year, Percy, Blotzer, and DeMartini executed a
10 "Bill of Sale and Agreement" representing that they were the
11 members of the RATT Partnership and conveying all rights in the
12 RATT trademarks to the newly formed WBS, Inc. ("WBS" or
13 "Plaintiff") in exchange for shares in WBS. (Counterclaim ¶ 17;
14 Croucier Decl. ¶ 8; Request for Judicial Notice, Ex. 5.) Croucier
15 was not a party to this transaction, nor did he tour with the RATT
16 band in 1997. (Declaration of Drew Sherman in Support of
17 Plaintiff's Motion, Ex. G at 160.) WBS recorded the assignment of
18 the trademarks with the United States Patent and Trademark Office
19 seven years later, in 2004. (RJN, Ex. 5.) Various iterations of
20 RATT toured, without Croucier, between 1992 and 2012. Croucier
21 rejoined the band from 2012 to 2014.

22 In 2013, after discussions with Blotzer, Croucier, DeMartini,
23 and Percy, Defendant Hoffman began working as RATT's band manager.
24 (Declaration of Rob Hoffman ¶ 3.) Hoffman followed the day-to-day
25 direction of Blotzer and DeMartini who, by that time, were the only

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27 ³ In 1995, Percy wrote another letter disclaiming authorship
28 of the 1992 writing, confirming that he had withdrawn from the
band, and maintaining that the RATT Partnership no longer existed.
(Supp. Sherman Decl., Ex. X at 10.)

1 two shareholders of WBS. (Id. ¶¶ 2-3, 5.) At some point, Hoffman
2 was given sole administrator rights to RATT's Facebook and Twitter
3 accounts. (Hoffman Decl. ¶ 11.)

4 In 2014, Percy, Croucier, and Blotzer each formed or
5 performed with their own separate bands. (Croucier Decl. ¶ 10.)
6 Blotzer formed a band called "Bobby Blotzer's Ratt Experience," but
7 then changed his band's name to RATT. (Id.) In August 2015,
8 Croucier's band announced itself as "RATT's Juan Croucier."
9 (Supplemental Declaration of Drew Sherman, Ex. G at 35.) Croucier
10 began using the RATT marks on advertisements and merchandise, and
11 continued to refer to himself as "The Other Voice of RATT," as he
12 had done since as early as 2007. (Id. at 38, 56.) In August 2015,
13 counsel for Blotzer made several demands that Croucier stop using
14 the RATT marks. (Suppl. Sherman Decl., Ex. B.) "RATT's Juan
15 Croucier" has played approximately twelve shows since August 15,
16 2015, and Croucier admittedly continues to use the marks. (Id. at
17 Ex. at G36.) On September 10, 2015, Croucier sent a letter to
18 DeMartini confirming that Croucier was "currently a member of Ratt
19 and the band has not played any shows" since 2012. (Croucier
20 Decl., Ex. 3.) That same day, DeMartini confirmed that Croucier's
21 statement was accurate. (Id.)

22 On September 4, 2015, counsel for Blotzer demanded that
23 Hoffman turn over all social media logins and passwords "that are
24 owned by WBS, Inc. or use any of WBS, Inc's intellectual property."
25 (Hoffman Decl. ¶ 12.) That same day, however, DeMartini instructed
26 Hoffman not to take any action. (Hoffman Decl., Ex. B.) Hoffman
27 informed Blotzer's counsel of the dispute between the WBS
28

1 shareholders and expressed a desire to remain neutral until the
2 dispute was resolved.⁴ (Id. ¶ 14.)

3 On September 15, 2015, WBS filed the instant action against
4 Croucier and Hoffman, alleging causes of action against Croucier
5 for trademark infringement and dilution, unfair competition, and
6 interference with economic relations related to Croucier's
7 advertising and performances with "RATT's Juan Croucier," as well
8 as tortious interference and conversion claims against Hoffman.
9 (Dkt. 1). DeMartini has since filed a shareholder derivative suit
10 against Blotzer on behalf of WBS. (Croucier Decl. ¶ 10.)

11 WBS and Croucier now move for summary judgment on WBS'
12 trademark-related claims against Croucier. Hoffman also moves for
13 summary judgment with respect to the claims against him.

14 **II. Legal Standard**

15 Summary judgment is appropriate where the pleadings,
16 depositions, answers to interrogatories, and admissions on file,
17 together with the affidavits, if any, show "that there is no
18 genuine dispute as to any material fact and the movant is entitled
19 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party
20 seeking summary judgment bears the initial burden of informing the
21 court of the basis for its motion and of identifying those portions
22 of the pleadings and discovery responses that demonstrate the
23 absence of a genuine issue of material fact. See Celotex Corp. v.
24 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from
25 the evidence must be drawn in favor of the nonmoving party. See
26 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986). If the

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28 ⁴ Blotzer's counsel represents WBS in the instant matter.

1 moving party does not bear the burden of proof at trial, it is
2 entitled to summary judgment if it can demonstrate that "there is
3 an absence of evidence to support the nonmoving party's case."
4 Celotex, 477 U.S. at 323.

5 Once the moving party meets its burden, the burden shifts to
6 the nonmoving party opposing the motion, who must "set forth
7 specific facts showing that there is a genuine issue for trial."
8 Anderson, 477 U.S. at 256. Summary judgment is warranted if a
9 party "fails to make a showing sufficient to establish the
10 existence of an element essential to that party's case, and on
11 which that party will bear the burden of proof at trial." Celotex,
12 477 U.S. at 322. A genuine issue exists if "the evidence is such
13 that a reasonable jury could return a verdict for the nonmoving
14 party," and material facts are those "that might affect the outcome
15 of the suit under the governing law." Anderson, 477 U.S. at 248.
16 There is no genuine issue of fact "[w]here the record taken as a
17 whole could not lead a rational trier of fact to find for the
18 nonmoving party." Matsushita Elec. Indus. Co. v. Zenith Radio
19 Corp., 475 U.S. 574, 587 (1986).

20 It is not the court's task "to scour the record in search of a
21 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275,
22 1278 (9th Cir.1996). Counsel has an obligation to lay out their
23 support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d
24 1026, 1031 (9th Cir.2001). The court "need not examine the entire
25 file for evidence establishing a genuine issue of fact, where the
26 evidence is not set forth in the opposition papers with adequate
27 references so that it could conveniently be found." Id.

28 **III. Discussion**

1 A. Whether WBS Owns the Trademarks

2 A threshold issue in this matter is whether WBS has an
3 ownership interest in the RATT trademarks. See Rearden LLC v.
4 Rearden Commerce, Inc., 683 F.3d 1190, 1202-3 (9th Cir. 2012)
5 (listing elements of a trademark claim). It is undisputed that, at
6 some point, the RATT Partnership owned the RATT marks. Croucier
7 maintains that he never left the RATT Partnership, that any
8 purported assignment of the marks to WBS was invalid, and that the
9 Partnership owns the marks to this day.

10 WBS argues that because it registered an assignment of the
11 RATT marks from the Partnership to WBS with the Patent and
12 Trademark Office in 2004, its ownership of the marks is
13 incontestable. Registration of a trademark does give rise to a
14 presumption of ownership, subject to rebuttal by a preponderance of
15 the evidence. Sengoku Works Ltd. v. RIMC Int'l, Ltd., 96 F.3d
16 1217, 1219 (9th Cir. 1996); 15 U.S.C. 1115(a). However, a showing
17 that the registrant "had not established valid ownership rights in
18 the mark at the time of registration" can serve to rebut the
19 presumption of ownership. Id. at 1220. The Ninth Circuit has also
20 held that because an invalid assignment of a trademark conveys no
21 rights, the registration of such an assignment does not grant any
22 rights in the trademark. Mr. Donut of America v. Mr. Donut, Inc.,
23 418 F.2d 838, 842 (9th Cir. 1969).⁵

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26 ⁵ Plaintiff's citation to 15 U.S.C. § 1060(a)(3) is inapt.
27 Although the statute provides that recordation of an assignment is
28 prima facie evidence of an assignment's execution, the issue here
is not whether the assignment to WBS was executed, but rather
whether that assignment was valid.

1 Even assuming that Plaintiff has made a prima facie showing of
2 ownership of the RATT marks, there is no triable issue with respect
3 to the question whether the assignment from the Partnership to WBS
4 was invalid. Plaintiff asserts that, at the time of the assignment
5 in 1997, Percy, Blotzer, and DeMartini were the only remaining
6 members of the RATT Partnership, and therefore had the authority to
7 convey the rights in the marks to WBS without Croucier's consent.
8 Croucier contends first that there "is an open factual question as
9 to whether Mr. Percy and Mr. DeMartini withdrew from the band or
10 the Partnership" prior to 1997. Croucier points to two separate
11 documents supposedly drafted in 1992. The first document,
12 apparently written by Percy on the back of a napkin in February
13 1992, is addressed to "Allen Kouvac," who appears to have been the
14 manager of RATT at the time. Although difficult to discern, the
15 writing appears to refer to Percy's "departure from RATT . . .
16 [a]nd that I'm leaving the band." (Croucier Decl., Ex. B.)
17 Croucier posits that because Percy stated that he was leaving the
18 band and referred to his "departure from RATT" separately, he must
19 have meant that he was leaving the RATT Partnership. Further,
20 although Percy later, in 1995, denied authoring any document
21 addressed to "Allen Kovak," he also took the position that, as of
22 1995, "there is no RATT a partnership," suggesting that he may, at
23 some point, have withdrawn from the partnership. (Supp. Sherman
24 Decl., Ex. X at 10.)

25 Although a reasonable trier of fact could not conclude, on
26 this record, that the napkin alone sufficed to signify or inform
27 the other members of the RATT Partnership of Percy's voluntary
28 departure from the Partnership, it does, in conjunction with his

1 1995 disavowal of the continued existence of the Partnership,
2 create a triable issue of fact as to his partnership status at the
3 time of the 1997 assignment to WBS.

4 The second document to which Croucier cites presents a
5 question as to whether DeMartini withdrew from the RATT Partnership
6 prior to the 1997 assignment to WBS. On June 1, a Linda Rein,
7 whose identity is not entirely clear to the court, addressed a
8 letter to "The RATT Partnership" on behalf of DeMartini. (Croucier
9 Decl., Ex. C.) The letter represented itself as "formal notice
10 that Warren DeMartini is no longer a member of the recording and
11 performing group professionally known as 'RATT', effective as of
12 the date" of the letter. (Id.) The letter was copied to
13 DeMartini, Croucier, Blotzer, and others, but not to Percy. (Id.)
14 The letter is sufficiently ambiguous to, as Croucier acknowledges,
15 create an open question regarding DeMartini's withdrawal. The
16 letter refers only to DeMartini's withdrawal from the band RATT,
17 with no mention of the RATT Partnership, and does not strictly
18 comply with the requirements of the Partnership Agreement, as it
19 does not provide three months advance notice and, arguably, to the
20 extent it was not copied to Percy, did not inform all of the other
21 partners of DeMartini's intent. The letter was, however, addressed
22 to the RATT Partnership. Although the bulk of the evidence appears
23 to suggest that DeMartini did not intend to withdraw from the
24 Partnership, a trier of fact might conceivably conclude otherwise.

25 These lingering questions about Percy and DeMartini's
26 continued membership in the Partnership as of 1997 would, on their
27 own, preclude a grant of summary judgment in either Croucier or
28 WBS' favor. The question of Croucier's membership in the

1 Partnership, however, is more fundamental. There is no dispute
2 that Croucier remained a partner through the end of 1996.
3 Plaintiff contends that Croucier was expelled from the Partnership
4 in 1997, and that Blotzer, DeMartini and Percy therefore did not
5 need Croucier's consent to assign the RATT marks from the
6 Partnership to WBS later that same year. As proof of its
7 contention, WBS cites to a letter to Croucier dated January 20,
8 1997 stating, "The undersigned, by their unanimous vote and
9 consent, in accordance with . . . the Partnership Agreement . . . ,
10 herewith advise you that you are expelled from the partnership,
11 Ratt." (Declaration of Stephen Percy, Ex. 1.) The letter is
12 purportedly signed by Blotzer and Percy. (Id.)

13 This "letter of expulsion" is insufficient to establish that
14 Croucier was expelled from the Partnership for several reasons.
15 First, it is undisputed that, under the terms of the Partnership
16 Agreement, a partner could be involuntarily expelled from the
17 Partnership only with the unanimous consent of the remaining
18 partners. The 1997 "Bill of Sale and Agreement" conveying all
19 rights in the RATT trademarks to WBS represented that Percy,
20 Blotzer, and DeMartini were the members of the RATT Partnership,
21 and WBS has taken the position in this litigation that DeMartini
22 never withdrew from the Partnership. (WBS Opposition to Croucier
23 Motion at 9). The letter of expulsion, however, refers to the
24 "unanimous vote and consent" of only two partners, Blotzer and
25 Percy. If, as WBS maintains, DeMartini never left the
26 Partnership, his consent would have been required to expel
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1 Croucier.⁶ Notwithstanding the Partnership's subsequent
2 representation at the time of the assignment that its members were
3 Percy, Blotzer, and DeMartini, there is no evidence that DeMartini
4 ever consented to Croucier's expulsion, let alone that he did so in
5 January 1997.

6 Second, Percy, one of two supposed signatories to the letter
7 of expulsion, has stated, under penalty of perjury, that he never
8 discussed Croucier's expulsion from the RATT Partnership with
9 Blotzer, never understood Croucier to have been expelled, and has
10 no recollection of seeing the 1997 expulsion letter prior to this
11 litigation. (Percy Decl. ¶¶ 102.) Percy's declaration states
12 that the letter "is not the product of any agreement I reached with
13 Robert Blotzer or anyone else."⁷ (Id. ¶ 2.) Although, as
14 discussed above, Percy's understanding is somewhat difficult to
15 reconcile with the 1997 Bill of Sale and Agreement, which
16 represents that Percy, DeMartini, and Blotzer were "the Partners"

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20 ⁶ At oral argument, Plaintiff asserted for the first time
21 that although the Partnership Agreement required the unanimous
22 consent of all the partners to involuntarily expel another partner,
23 it did not require that the writing notifying an expelled partner
24 of his expulsion be signed by all of the expelling partners. Even
25 assuming that interpretation to be correct, there is no evidence
26 that DeMartini ever consented to Croucier's expulsion. The
27 expulsion letter itself only refers to the unanimous vote and
28 consent of "the undersigned," i.e. Blotzer and Percy. There is no
suggestion in the letter itself that DeMartini ever opined on
Croucier's expulsion, and no other evidence in the record to
suggest as much.

⁷ At argument, Plaintiff appeared to suggest that Percy's
declaration is not credible. Plaintiff has not, however, filed any
evidentiary objection to Percy's declaration or submitted any
evidence, other than the letter itself, that conflicts with or
contradicts Percy's assertions.

1 of WBS, on this record, no reasonable trier of fact could conclude
2 that Croucier was ever expelled from the RATT Partnership.⁸

3 The evidence is undisputed that Croucier was a founding
4 partner of the RATT Partnership. No reasonable factfinder could
5 conclude that Croucier was ever expelled from the Partnership. It
6 is undisputed that no partner in the RATT Partnership could
7 transfer or assign any part of his interest in the RATT Partnership
8 without the unanimous consent of the other partners. Croucier has
9 never consented to the assignment of the RATT marks to WBS or to
10 anyone else. Accordingly, there is no triable issue with respect
11 to the validity of the assignment of the RATT marks to WBS.
12 Because the assignment was invalid, WBS cannot make the threshold
13 showing that it has an ownership interest in the marks, and its
14 trademark claims fail.⁹ Summary judgment is therefore warranted in
15 favor of Croucier and against WBS.¹⁰

16 B. Claims against Hoffman

17 1. Conversion

18 Under California law, a conversion claim requires (1)
19 ownership or right to possession of property, (2) wrongful
20 disposition of that property, and (3) damages. G.S. Rasmussen &
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22 ⁸ Indeed, Blotzer himself does not appear to share WBS'
23 position that Croucier was expelled from the Partnership. Although
24 Plaintiff cites to one of Blotzer's declarations to support the
25 contention that Croucier "was formally terminated from the
26 Partnership," Blotzer stated that Croucier "on his own will and
27 volition[] withdrew from the Band and the RATT partnership."
28 (Supp. Sherman Decl., Ex. O at 2.)

26 ⁹ WBS' unfair competition claim is predicated upon its
trademark claims, and therefore also fails.

27 ¹⁰ Having concluded that there is no triable issue of fact
28 regarding an essential element of Plaintiff's claim, the court need
not address the parties' arguments regarding Croucier's defenses.

1 Assoc., Inc. v. Kalitta Flying Serv., Inc., 958 F.2d 896, 906 (9th
2 Cir. 1992). "In order to establish a conversion the plaintiff must
3 show an intention or purpose to convert the goods and to exercise
4 ownership over them, or to prevent the owner from taking possession
5 of his property. Thus, a necessary element of the tort is an
6 intent to exercise ownership over property which belongs to
7 another." Collin v. Am. Empire Ins. Co., 21 Cal. App. 4th 787, 405
8 (1994).

9 It is undisputed that WBS granted Hoffman sole administrator
10 access to the RATT band's social media accounts. On September 4,
11 2015, counsel for Blotzer demanded that Hoffman turn over all
12 logins and passwords for "all social media accounts . . . that are
13 owned by WBS, Inc. or use any of WBS, Inc's intellectual property,
14 including, but not limited to, trademarks and copyrights."¹¹
15 (Hoffman Decl., Ex. A.) That same day, DeMartini contacted
16 Hoffman, informing him that Blotzer's "unilateral actions do not
17 change any of the existing positions at WBS" and instructing
18 Hoffman not to take any action. (Id., Ex. B.) Hoffman informed
19 Blotzer's counsel of the dispute between the shareholders and
20 expressed a desire to remain neutral until the dispute was
21 resolved. (Id. ¶ 14.) Plaintiff then filed this suit against
22 Hoffman. Approximately two weeks later, DeMartini filed suit
23 against Blotzer regarding control of WBS. (Id. ¶ 19.)

24 Even assuming that WBS owned the social media accounts to
25 which it demanded access, no reasonable trier of fact could
26 conclude that Hoffman's refusal to turn over the logins and
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28 ¹¹ As discussed above, the evidence establishes that the
assignment of the RATT marks to WBS was invalid.

1 passwords was wrongful. WBS' governing "Code of Conduct and
2 Operation" provides that termination of "management, or other
3 affiliates connected with the Band," or any threat of litigation on
4 WBS' behalf, shall require a majority vote of WBS' members.

5 (Hoffman RJN, Ex. 2 at 94 of 100.) There is no dispute that, by
6 September 2015, DeMartini and Blotzer were WBS' only shareholders,
7 and that each held a 50 percent interest. It is also undisputed
8 that Hoffman had previously been granted exclusive authority to
9 manage the social media accounts. DeMartini's correspondence with
10 Hoffman, however, clearly indicates that WBS' threats to sue
11 Hoffman, since carried out, and efforts to terminate Hoffman as
12 manager of the social media accounts were made against DeMartini's
13 wishes and, therefore, without majority shareholder support and
14 contrary to WBS' Code of Conduct and Operation. WBS has not
15 provided any evidence suggesting that Blotzer's counsel's demand to
16 Hoffman complied with WBS' own governing document.¹² Accordingly,
17 no trier of fact could find Hoffman's neutrality to be a wrongful
18 taking of WBS property. Hoffman is therefore entitled to summary
19 judgment on Plaintiff's claim for conversion.

20 2. Intentional Interference with Prospective Economic
21 Advantage

22 An intentional interference with prospective economic
23 relations claim requires (1) an economic relationship between
24 plaintiff and a third party with the probability of future economic
25 benefit to the plaintiff, (2) defendant's knowledge of that
26 relationship, (3) defendant's intentional, independently wrongful

27
28 ¹² Indeed, Plaintiff's Opposition to Hoffman's Motion does not
make a single citation to the record.

1 act to disrupt the relationship, (4) actual disruption, and (5)
2 economic harm to the plaintiff. Marsh v. Anesthesia Serv. Med.
3 Group. Inc., 200 Cal.App.4th 480, 504 (2011) (citing Korea Supply
4 v. Lockheed Martin Corp., 29 Cal.4th 1134, 1153 (2003)). As noted
5 above, Plaintiff's opposition to Hoffman's motion cites no evidence
6 whatsoever, let alone any evidence that the elements of its
7 intentional interference claim are satisfied here. (See note 7,
8 supra.)

9 Even assuming, as WBS asserts, that there is a triable issue
10 regarding WBS' economic relationship with specific third parties,
11 namely RATT's (unnamed) social media followers, there is no
12 evidence that Hoffman's refusal to turn over social media passwords
13 caused any economic harm to WBS. WBS simply assumes, without any
14 evidentiary support or citation to the record, that had Hoffman
15 turned over the passwords to Blotzer's counsel, WBS would have more
16 actively communicated with followers over social media and
17 successfully translated those outreach efforts into some economic
18 gain.

19 Even taking that unfounded assumption as true, furthermore,
20 there is no evidence that Hoffman engaged in an "independently
21 wrongful act." An act is independently wrongful "if it is
22 proscribed by some constitutional, statutory, regulatory, common
23 law, or other determinable legal standard." Korea Supply, 29
24 Cal.4th at 1159. Although Plaintiff has not articulated its theory
25 of Hoffman's independently wrongful act, it presumably refers to
26 Hoffman's alleged conversion of the social media accounts. As
27 explained above, however, WBS' conversion claim is not viable.
28 Absent any other independently wrongful act, Hoffman cannot be

1 liable for intentional interference with prospective economic
2 relations. Accordingly, summary judgment is granted in Hoffman's
3 favor.

4 **IV. Conclusion**

5 For the reasons stated above, Plaintiff's Motion for Summary
6 Judgment is DENIED. Defendants' Motions for Summary Judgment are
7 GRANTED.

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9 IT IS SO ORDERED.

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12 Dated: November 8, 2016



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DEAN D. PREGERSON
United States District Judge

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State of California
Secretary of State

GP-1

File # _____

Document # _____

Statement of Partnership Authority

A \$70.00 filing fee must accompany this form.

IMPORTANT - Read instructions before completing this form.

This Space For Filing Use Only

Partnership Name

1. Name of Partnership

RATT, a California general partnership

Office Addresses (Do not abbreviate the city. Items 2 and 3 cannot be P.O. Boxes.)

2. Street Address of Chief Executive Office

603 Rose Avenue

City

Venice

State

CA

Zip Code

90291

3. Street Address of California Office, if any

603 Rose Avenue

City

Venice

State

CA

Zip Code

90291

4. Mailing Address of Chief Executive Office, if different from items 2 or 3

City

State

Zip Code

Names & Addresses of Partners (Complete item 5 with the names and mailing addresses of all the partners (attach additional pages if necessary) OR leave item 5 blank and proceed to item 6. Any attachments to this document are incorporated herein by this reference.)

5. Name

Address

City

State

Zip Code

Name

Address

City

State

Zip Code

Name

Address

City

State

Zip Code

Appointed Agent (If item 5 was not completed, complete item 6 with the name and mailing address of an agent appointed and maintained by the partnership who will maintain a list of the names and mailing addresses of all the partners. If item 5 was completed, leave item 6 blank and proceed to item 7.)

6. Name

Juan Carlos Croucier

Address

603 Rose Avenue

City

Venice

State

CA

Zip Code

90291

Authorized Partners (Enter the name(s) of all the partners authorized to execute instruments transferring real property held in the name of the partnership. Attach additional pages if necessary. Any attachments to this document are incorporated herein by this reference.)

7. Partner Name:

Partner Name:

Partner Name:

N/A

Partner Name

N/A

Partner Name:

Partner Name

Additional Information

8. Additional information set forth on the attached pages, if any, is incorporated herein by this reference and made part of this document.

Execution (This form must be signed by at least two partners. If additional signature space is necessary, the dated signature(s) with verification(s) may be made on an attachment to this document. Any attachments to this document are incorporated herein by this reference.)

9. I certify under penalty of perjury that the contents of this document are true.

Signature of partner

Stephen Percy

Type or Print Name of partner

Signature of partner

Juan Carlos Croucier

Type or Print Name of partner

GP-1 (REV 01/2011)

APPROVED BY SECRETARY OF STATE